

## CIVIL COVER SHEET

JS 44 (Rev. 12/07) (CAND Rev 1/10)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> LARRY CAMPBELL	<b>DEFENDANTS</b> HILL PHYSICIANS MEDICAL GROUP, INC., dba PHYSICIANS INTEGRATED MEDICAL GROUP, INC.
<b>(b)</b> County of Residence of First Listed Plaintiff <b>SAN FRANCISCO</b> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
<b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number) SEE ATTACHED	Attorneys (If Known)

<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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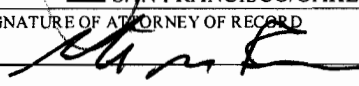
<b>V. ORIGIN</b> (Place an "X" in One Box Only)	Transferred from Appeal to District
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Judge from Magistrate Judgment	

<b>VI. CAUSE OF ACTION</b>	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Fair Credit Reporting Act, 15 U.S.C. & 1581 et seq. Brief description of cause: Violation of FCRA requirements re use of credit report by employers
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<b>VII. REQUESTED IN COMPLAINT:</b>	<input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 20,000 + CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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<b>VIII. RELATED CASE(S) IF ANY</b>	PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".
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<b>IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)</b>	<input checked="" type="checkbox"/> SAN FRANCISCO/OAKLAND <input type="checkbox"/> SAN JOSE <input type="checkbox"/> EUREKA
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DATE 8/18/2011	SIGNATURE OF ATTORNEY OF RECORD 
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**ATTACHMENT TO CIVIL COVER SHEET**  
**Question 1-c**

Attorneys for plaintiff:

Robert M. Bramson  
Daniel E. Birkhaeuser  
Bramson, Plutzik, Mahler & Birkhaeuser  
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Fax: (925) 945-8792  
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Leonard Bennett  
Matthew J. Erasquin  
CONSUMER LITIGATION ASSOCIATES, P.C  
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 Matthew J. Erausquin (Cal. Bar No. 255217) (PHV forthcoming)  
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dbirkhaeuser@bramsonplutzik.com

Attorneys for Plaintiff,  
 LARRY CAMPBELL

IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 San Francisco/Oakland Division

LARRY CAMPBELL,

Plaintiff,

v.

HILL PHYSICIANS MEDICAL  
 GROUP, INC. d/b/a  
 PHYSICIANS INTEGRATED  
 MEDICAL GROUP, INC.,

Defendant.

Case No. -

COMPLAINT FOR VIOLATIONS  
 OF THE FAIR CREDIT  
 REPORTING ACT AND STATE  
 LAW

(DEMAND FOR JURY TRIAL)

CLASS ACTION

FILED

AUG 18 2011

RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND

MEJ  
 ADP

COMES NOW the Plaintiff Larry Campbell (hereafter, "Campbell" or "Plaintiff"), by counsel, on behalf of himself and all others similarly situated, and as for his Complaint against the Defendant, he alleges as follows:

### **PRELIMINARY STATEMENT**

1. This action is brought under the Federal Fair Credit Reporting Act (FCRA), 15 U.S.C. §1681, *et seq.* The FCRA imposes on employers that use a background check or other consumer report regarding an employee or job applicant several important procedural requirements designed to protect consumers like Plaintiff. Plaintiff applied for a job at Defendant and Defendant used his consumer report that it obtained from SentryLink, LLC, a consumer reporting agency, to rescind its offer to hire Plaintiff. In doing so, Defendant failed to comply with the procedural protections and requirements imposed on it by the FCRA.

### **JURISDICTION**

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367 and 15 U.S.C. § 1681(p). Venue is proper in this Court under 28 U.S.C. § 1391(b) as the Defendant regularly does business in the district and division, this is where the Plaintiff resides and this is the district and division into which Defendant was required to provide a proper adverse action notice

### **PARTIES**

3. The Plaintiff is a natural person and a "consumer" as defined by the FCRA.

4. Defendant Hill Physicians Medical Group, Inc. d/b/a Physicians Integrated Medical Group, Inc. (hereafter, "PIMG") is a domestic corporation. At all times relevant hereto, it was a "user" of the consumer report of Plaintiff, as governed by the FCRA.

### **STATEMENT OF FACTS**

5. Plaintiff applied for employment with PIMG in August of 2009.

6. On or about August 19, 2009, PIMG obtained and used one or more consumer reports regarding the Plaintiff from one or more third parties, including SentryLink, LLC. It did so without ever providing a disclosure to the Plaintiff, in a document that consisted solely of the disclosure, informing the Plaintiff that a consumer report would be obtained for employment purposes.



1           7.       The consumer report that SentryLink, LLC supplied to PIMG regarding the  
2 Plaintiff contained numerous inaccuracies regarding criminal convictions, alias information, and  
3 personal identifying information including, but not limited to, the false and outrageous assertions  
4 that Plaintiff had been convicted of multiple counts of sexual assault and also that he had failed to  
5 register as a sex offender in Arizona.

6           8.       Plaintiff has never been convicted of sexual assault or failure to register as a sex  
7 offender. Plaintiff has been a resident of San Francisco since 1992 and is not a criminal.

8           9.       After obtaining and using the Plaintiff's consumer report supplied by SentryLink,  
9 LLC, and before providing Plaintiff with a copy of his report, or any description of his rights  
10 under the FCRA, PIMG denied his employment application on the basis of the report and  
11 informed Plaintiff specifically that the CEO of PIMG was "uncomfortable with him" as a result of  
12 the information provided in the consumer report.

13          10.      Thereafter, Plaintiff notified PIMG that the information contained in the consumer  
14 report was not accurate, that Plaintiff was not a criminal, and that he had never resided in  
15 Arizona.

16          11.      PIMG refused to interact with Plaintiff thereafter, directly rebuffing his substantial  
17 efforts to clear his name. Defendant refused to honor the employment offer that it had previously  
18 made to the Plaintiff.

19          12.      PIMG failed to provide Plaintiff with a copy of the consumer report or written  
20 summary of his rights under the FCRA before or even at the time it informed him that it had  
21 withdrawn the offer of employment based in whole or in part on the report results.

22          13.      PIMG also failed to provide Plaintiff with any of the notices required by  
23 §1681b(b) of the FCRA.

24          14.      Section 1681b(b)(2) of the FCRA regulates the conduct of any person who uses a  
25 "consumer report" for an employment purpose. It states, in relevant part:

26               [A] person may not procure a consumer report, or cause a consumer report to be  
27 procured, for employment purposes with respect to any consumer, unless—  
28

(i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and

(ii) the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.

15. Section 1681b(b)(2) thus limits the circumstances and process by which an employer may obtain and use a consumer report for an employment purpose. Use for such a purpose is more restrictive than other uses, such as for credit. The "permission to obtain a report" form must be a stand alone document with no other matters contained therein.

16. Section 1681b(b)(3)(A) of the FCRA regulates the conduct of any person who uses a "consumer report" to take an adverse action against any employees or prospective employees as follows:

Except as provided in subparagraph (B) [in cases of a consumer applying for a position over which the Secretary of Transportation may establish qualifications], in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates –

(i) a copy of the report; and

(ii) a description in writing of the rights of the consumer under this subchapter, as prescribed by the Federal Trade Commission under section 1681g(c)(3) of this title.

17. The purpose of §1681b(b)(3)(A) is to provide a prospective or current employee a sufficient amount of time to review the consumer report, note any inaccuracies and to notify the prospective employer of these inaccuracies before an adverse action is taken.

18. PIMG failed to provide a copy of the consumer report in a sufficient amount of time before it took the adverse action to allow Plaintiff to discuss the report with PIMG or otherwise respond before the adverse action was taken.

19. Upon information and belief, it is PIMG's standard hiring practice to rely on consumer reports, and when the results are unsatisfactory, to fire or refuse to hire/fire people without the statutory disclosure or written authorization, without giving them any advance notice of the adverse action, without first providing them with a copy of their consumer report, without

1 providing them with a summary of their rights under the FCRA before taking the adverse action,  
2 and without providing most of the oral, written or electronic notices required by the FCRA.

3 20. PIMG acted willfully. PIMG knew or should have known about its legal  
4 obligations under the FCRA. These obligations are well established in the plain language of the  
5 FCRA and in the promulgations of the Federal Trade Commission.

6 21. Despite knowing of these legal obligations, PIMG acted consciously in breaching  
7 its known duties and depriving Plaintiff and other members of the class of their rights under the  
8 FCRA.

9 **COUNT ONE: VIOLATION OF THE FCRA § 1681b(b)(2)(A)**

10 22. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth  
11 at length herein.

12 23. The "Class". Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff  
13 brings this count for himself and on behalf of a class (the "Class") initially defined as follows:

14 All natural persons residing in the United States (including all territories and other  
15 political subdivisions of the United States) who were the subject of a consumer  
16 report obtained by Defendant for an employment purpose during the period  
provided at 15 U.S.C. § 1681p through the filing of this Complaint.

17 24. Numerosity. Fed. R. Civ. P. 23(a)(1). Upon information and belief, the Plaintiff  
18 alleges that the Class members are so numerous that joinder of all is impractical. The names and  
19 addresses of the Class members are identifiable through documents maintained by PIMG, and the  
20 Class members may be notified of the pendency of this action by published and/or mailed notice.

21 25. Existence and Predominance of Common Questions of Law and Fact. Fed. R. Civ.  
22 P. 23(a)(2). Common questions of law and fact exist as to all members of the Class. These  
23 questions predominate over the questions affecting only individual members. These common  
24 legal and factual questions include, among other things:

- 25 a. Whether Defendant's procedures and forms for employment applications violate §  
26 1681b(b)(2)(A) by failing to make a "clear and conspicuous" disclosure.
- 27 b. Whether Defendant's procedures and forms for employment applications violate §  
28 1681b(b)(2)(A) by failing to make the required disclosure "in a document that  
consists solely of the disclosure".



1 c. Whether Defendant's procedures and forms for employment applications violate  
2 §1681b(b)(2)(A) by causing Defendant to procure a consumer report in the  
absence of providing the legally mandated disclosure to consumers.

3 d. Whether Defendant's noncompliance of the FCRA was "willful" – whether it was  
4 reckless.

5 26. Typicality. Fed. R. Civ. P. 23(a)(3)). Plaintiff's claims are typical of the claims of  
6 each Class member. Plaintiff would only seek individual or actual damages if class certification  
7 is denied. In addition, Plaintiff is entitled to relief under the same causes of action and upon the  
8 same facts as the other members of the Class.

9 27. Adequacy. Fed. R. Civ. P. 23(a)(4). Plaintiff is an adequate representative of the  
10 Class because his interests coincide with, and are not antagonistic to, the interests of the members  
11 of the Class he seeks to represent, he has retained counsel competent and experienced in such  
12 litigation, and he intends to prosecute this action vigorously. Plaintiff and his Counsel will fairly  
13 and adequately protect the interests of members of the Class.

14 28. Superiority. Fed. R. Civ. P. 23(b)(3). A class action is superior to other available  
15 methods for fair and efficient adjudication of the controversy. The statutory and punitive  
16 damages sought by each member are such that individual prosecution would prove burdensome  
17 and expensive given the complex and extensive litigation necessitated by Defendant's conduct. It  
18 would be virtually impossible for the members of the Class individually to redress effectively the  
19 wrongs done to them. Even if the members of the Class themselves could afford such individual  
20 litigation, it would be an unnecessary burden on the courts. Furthermore, individualized litigation  
21 presents a potential for inconsistent or contradictory judgments and increases the delay and  
22 expense to all parties and to the court system presented by the complex legal and factual issues  
23 raised by Defendant's conduct. By contrast, the class action device will result in substantial  
24 benefits to the litigants and the Court by allowing the Court to resolve numerous individual  
25 claims based upon a single set of proof in just one case.

26 29. Defendant violated the FCRA, § 1681b(b)(2)(A) by obtaining and using the  
27 consumer reports of the Plaintiff and member of the putative class for an employment purpose,  
28 but without complying with the requirements of this provision.



30. As a result of these FCRA violations, PIMG is liable to Plaintiff and to each FCRA Class Member, for statutory damages from \$100.00 to \$1,000.00 pursuant to 15 U.S.C. §1681n(a)(1)(A), plus punitive damages pursuant to 15 U.S.C. §1681n(a)(2) for each of the violations alleged herein, and for attorneys fees and costs pursuant to §1681n and §1681o.

31. In the alternative to the Plaintiff's allegations that these violations were willful, he alleges that the violations were negligent and seeks issue certification of that issue and appropriate remedy, if any, under 15 U.S.C. §1681o.

32. Plaintiff and Class Members are entitled to equitable relief against PIMG requiring its compliance with the FCRA in all future instances and/or offering (re-)employment to Plaintiff and class members, and enjoining future violations of the FCRA.

#### **COUNT TWO: VIOLATION OF THE FCRA § 1681b(b)(3)(A)**

33. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth at length herein.

34. The "Pre-Adverse Action Notice Sub-Class". Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this count for himself and on behalf of a sub-class (the "Pre-Adverse Action Notice Sub-Class") initially defined as follows:

All natural persons residing in the United States (including all territories and other political subdivisions of the United States), (a.) who applied for an employment position with Defendant or any of its subsidiaries, (b.) as part of this application process were the subject of a consumer report obtained by Defendant, (c.) where that consumer report contained a criminal public record or credit item that would disqualify the person from such position under Defendant's hiring policies, (d.) which consumer was not then approved or hired for the position, (e.) and to whom Defendant did not provide a copy of the consumer report and other disclosures stated at 15 U.S.C. § 1681b(b)(3)(A)(ii) at least five business days before the date the employment decision is first noted in Defendant's records.

35. Numerosity. Fed. R. Civ. P. 23(a)(1). Upon information and belief, the Plaintiff alleges that the Sub-Class members are so numerous that joinder of all is impractical. The names and addresses of the Sub-Class members are identifiable through documents maintained by the Defendant, and the Sub-Class members may be notified of the pendency of this action by published and/or mailed notice.

36. Existence and Predominance of Common Questions of Law and Fact. Fed. R. Civ. P. 23(a)(2). Common questions of law and fact exist as to all members of the Sub-Class. These questions predominate over the questions affecting only individual members. These common legal and factual questions include, among other things:

- a. Whether Defendant provided a copy of the consumer report to the applicant or employee before declining to hire or discharging the applicant or employee based on the results thereof (§1681b(b)(3)(A)(i));
- b. Whether Defendant provided a copy of a summary of the applicant or employee's rights under the FCRA before declining to hire or discharging the applicant or employee (§ 1681b(b)(3)(A)(ii));
- c. Whether Defendant reckless, knowingly or intentionally acted in conscious disregard of the rights of the consumer;
- d. Whether the conduct alleged violates the FCRA.

37. Typicality. Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the claims of each Sub-Class member. Plaintiff would only seek individual or actual damages if class certification is denied. In addition, Plaintiff is entitled to relief under the same causes of action and upon the same facts as the other members of the Sub-Class.

38. Adequacy. Fed. R. Civ. P. 23(a)(4). Plaintiff is an adequate representative of the Sub-Class because his interests coincide with, and are not antagonistic to, the interests of the members of the Sub-Class he seeks to represent, he has retained counsel competent and experienced in such litigation, and he intends to prosecute this action vigorously. Plaintiff and his Counsel will fairly and adequately protect the interests of members of the Sub-Class.

39. Superiority. Fed. R. Civ. P. 23(b)(3). A class action is superior to other available methods for fair and efficient adjudication of the controversy. The statutory and punitive damages sought by each member are such that individual prosecution would prove burdensome and expensive given the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for the members of the Sub-Class individually to redress effectively the wrongs done to them. Even if the members of the Sub-Class themselves could afford such

individual litigation, it would be an unnecessary burden on the courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues raised by Defendant's conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in just one case.

40. Defendant willfully violated the FCRA, 15 U.S.C. §1681b(b)(3)(A) as to the Pre-Adverse Action Sub-Class, because it failed to provide a copy of the consumer report used to make an employment decision and related disclosures to Plaintiff and all other similarly situated applicants and employees before taking an adverse action that was based in whole or in part on that report; and/or by doing so at least five business days before taking such action.

41. As a result of these FCRA violations, Defendant is liable to Plaintiff and to each Pre-Adverse Action Sub-Class Member, for statutory damages from \$100.00 to \$1,000.00 pursuant to 15 U.S.C. §1681n(a)(1)(A), plus punitive damages pursuant to 15 U.S.C. §1681n(a)(2) for each of the violations alleged herein, and for attorneys fees and costs pursuant to §1681n and §1681o.

42. In the alternative to the Plaintiff's allegations that these violations were willful, she alleges that the violations were negligent and seeks issue certification of that issue and appropriate remedy, if any, under 15 U.S.C. §1681o.

43. Plaintiff and Pre-Adverse Action Sub-Class Members are entitled to equitable relief against PIMG requiring its compliance with the FCRA in all future instances and/or re-employment of Plaintiff, and enjoining future violations of the FCRA.

**COUNT THREE: VIOLATION OF CALIFORNIA CIVIL CODE §1786.12**  
**(Plaintiff Campbell Individually)**

44. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth at length herein.

45. The Defendant failed to comply with the additional requirements applicable to California residents as set forth in California Civil Code § 1786.12.

46. As a result of these violations of California law, the Defendant is liable to the Plaintiff pursuant to California Civil Code § 1786.50 in the amount of the greater of his actual damages or \$10,000, such punitive damages as the jury may award upon a finding that the violation was grossly negligent or willful, and his attorneys fees and costs incurred in the prosecution of this action.

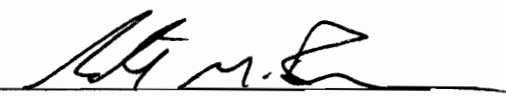
47. Plaintiff is further entitled to declaratory and injunctive relief as the Court deems proper and appropriate, including, but not limited to, an order requiring the Defendant's compliance with California law with respect to all applicants.

WHEREFORE, Plaintiff and the Class Members pray for relief as follows:

1. an order certifying the proposed FCRA class and sub-class herein under Federal Rule 23 and appointing Plaintiff and his undersigned counsel of record to represent same;
2. the creation of a common fund available to provide notice of and remedy Defendants' FCRA violations;
3. statutory and punitive damages; injunctive relief as pled;
4. attorneys fees, expenses and costs;
5. pre-judgment and post-judgment interest as provided by law;
6. and such other relief the Court does deem just, equitable and proper.

**TRIAL BY JURY IS DEMANDED.**

Date: August 18, 2011

By:   
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